

## SECTION VII

### WORK SHARING

- 7.1 The work to be performed under this MOU will be awarded based on the concept of Best Value.
- 7.2 The industries of each Participant will be given equal opportunity to compete for, and equal chance of being awarded, work for which they have the capability.
- 7.3 No requirement will be imposed by either Participant for work sharing or other industrial or commercial compensation in connection with this MOU that is not in accordance with this MOU.

## SECTION VIII

### EQUIPMENT AND MATERIAL TRANSFER

- 8.1 For the purpose of carrying out a PA, each Participant may transfer, without charge to the other Participant, such Equipment and Material identified as being necessary for implementing a PA. The PA will provide specific details of any transfer of Equipment and Material. Equipment and Material identified at the time of PA signature will be detailed in the PA as set out in Annex A (Model PA). Equipment and Material which cannot be identified at the time of PA signature will be documented, when identified, in a list to be developed and maintained by the PM. Approval for all Equipment and Material Transfers (E&MTs) will be in accordance with national procedures.
- 8.2 For E&MTs concluded pursuant to Annex C, each Participant may transfer, without charge to the other Participant, Equipment and Material, in accordance with the model at Annex C (E&MT Form). Approval for all E&MTs will be in accordance with national procedures.
- 8.3 Equipment and Material transferred will be used by the receiving Participant for the purposes specified in the PA or E&MT Form only. Equipment and Material will remain the property of the providing Participant. In addition, the receiving Participant will maintain the Equipment and Material in good order, repair, and operable condition. Unless the providing Participant has consented that the transferred Equipment and Material may be expended or otherwise consumed without reimbursement to the providing Participant, the receiving Participant will return the Equipment and Material to the providing Participant in as good condition as received, reasonable wear and tear excepted, or return the Equipment and Material and pay the cost to restore the Equipment and Material to such condition. If the Equipment and Material is damaged beyond economical repair, the receiving Participant will return the Equipment and Material to the providing Participant (unless otherwise specified in writing by the providing Participant) and pay the replacement value as computed pursuant to the providing Participant's national laws, regulations, and procedures. If the Equipment and Material is lost or stolen while in the custody of the receiving Participant, the receiving Participant will issue a certificate of loss to the providing Participant and pay the replacement value as computed pursuant to the providing Participant's national laws, regulations, and procedures. A good faith estimate of the replacement value will be calculated at the time of the loan. Should a loss occur, the actual replacement value will be computed by the providing Participant pursuant to the providing Participant's national laws, regulations, and procedures, in consultation with the receiving Participant.
- 8.4 The providing Participant will make every effort to ensure that the Equipment and Material is furnished in a serviceable and usable condition according to its intended

purpose. However, the providing Participant makes no warranty or guarantee of fitness of the Equipment and Material for a particular purpose or use, and makes no commitment to alter, improve, or adapt the Equipment and Material, or any part thereof.

- 8.5 The providing Participant will transfer the Equipment and Material for the approved period, unless extended by written amendment or terminated by either Participant. The duration of the transfer period will not exceed the effective period of the PA or E&MT Form.
- 8.6 The providing Participant, at its expense, will deliver the Equipment and Material, along with an equipment condition report and inventory, to the receiving Participant at a mutually determined location. Responsibility for Equipment and Material will pass from the providing Participant to the receiving Participant at time of receipt. Any further transportation will be the responsibility of the receiving Participant.
- 8.7 The providing Participant will furnish the receiving Participant such Information as is necessary to enable the Equipment and Material to be used.
- 8.8 Upon receipt of the equipment the receiving Participant will inspect and inventory the Equipment and Material. The receiving Participant will also inspect and inventory the Equipment and Material prior to its return (unless the Equipment and Material is to be expended or consumed).
- 8.9 Upon expiration or termination of the transfer period specified in the PA or the E&MT Form (taking into account any extension), the receiving Participant will return the Equipment and Material along with an equipment condition and inventory report, at its expense, to the providing Participant at a mutually determined location. Responsibility for the Equipment and Material will pass from the receiving Participant to the providing Participant at the time of its receipt. Any further transportation is the responsibility of the providing Participant.
- 8.10 The receiving Participant will provide written notice of consumption or expenditure of Equipment and Material approved for such consumption or expenditure. In the event the intended consumption or expenditure does not occur, the receiving Participant will, unless otherwise determined by the providing Participant, return the Equipment and Material, at its expense, to the providing Participant to a mutually determined location. Any further transportation is the responsibility of the providing Participant.
- 8.11 The Participants will ensure, by all reasonable means, the protection of Intellectual Property Rights in Equipment and Material.
- 8.12 Each Participant waives all claims against the other Participant for damage to or loss of jointly acquired or produced Equipment and Material arising from the performance of official duties. However, if the Participants mutually decide to repair damaged jointly acquired or produced Equipment and Material in order to

complete PA efforts, the cost of such repair will be shared in the same proportions established for the Participants' contributions under the PA. In any case, if the damage or loss is caused by reckless acts, reckless omission, willful misconduct or gross negligence, the costs of any liability, including the cost of repairs, will be borne by the responsible Participant.

- 8.13 Any Equipment and Material which is jointly acquired on behalf of both Participants will be disposed of during the PA or when the PA expires or is terminated, as approved or directed by the SC. Jointly acquired Equipment and Material will remain the property of both the Participants in the same ratio as Financial and Non-financial Costs are shared in the PA under which it is acquired. Disposal of jointly acquired or produced Equipment and Material may include a transfer of the interest of one of the Participants in such Equipment and Material to the other Participant, the sale or transfer of such Equipment and Material to a Third Party in accordance with Section XIII (Third Party Sales and Transfers), or sale or transfer to other entities. The Participants will share the consideration from jointly acquired or produced Equipment and Material transferred or sold to a Third Party or other entity in the same ratio as costs are shared in the PA.

## SECTION IX

### DISCLOSURE AND USE OF INFORMATION

- 9.1 Both Participants recognize that successful collaboration depends on full and prompt exchange of Information necessary for carrying out each TM Activity. The Participants intend to acquire sufficient Information and rights to use such Information to promote the objectives of this MOU. The nature and amount of Information to be acquired will be consistent with the objectives stated in Section III (Objectives) and Section IV (Scope of Work) of this MOU. Subject to the rights both Participants are accorded under this MOU, title to Foreground Information generated by a Participant or its Contractor will reside in that Participant and/or its Contractors, in accordance with that Participant's national laws, regulations, and policies. Nothing in this MOU will affect title to Background Information of the Participants or their Contractors. Transfer of such Information to Contractors will be consistent with each Participant's applicable respective export control laws and export control regulations.

#### Information Exchange, Working Groups, and Familiarization Visits

- 9.2 The disclosure and use provisions which govern exchange of Information, WGs, and Familiarization Visits authorized in Section II (Scope of Work), paragraphs 3.2.1, 3.2.2 and 3.2.5 are as follows in paragraphs 9.2.1, and 9.2.2:
- 9.2.1 Disclosure: Each Participant, upon request, will disclose to the other Participant any relevant Information, provided that:
- 9.2.1.1 such Information is necessary to or useful in a TM Activity, with the furnishing Participant determining whether it is "necessary to" or "useful in" the TM Activity;
  - 9.2.1.2 such Information may be made available without incurring liability to holders of Intellectual Property Rights;
  - 9.2.1.3 disclosure is consistent with national disclosure policies and regulations of the furnishing Participant; and
  - 9.2.1.4 any disclosure or transfer of such Information to Contractors is consistent with the furnishing Participant's export control laws and regulations.
- 9.2.2 Use: Use of Information will be for information and evaluation purposes only. Written permission from the furnishing Participant will be required for any other use.

## Project Arrangements

### 9.3 Government Foreground Information.

- 9.3.1 Disclosure: Government Foreground Information generated by a Participant's military or civilian employees will be disclosed without charge to the other Participant.
- 9.3.2 Use: Each Participant may use all Government Foreground Information without charge for Defense Purposes only. The Participant generating Government Foreground Information will also retain its rights of use thereto. Any sale or other transfer to a Third Party will be subject to the provisions of Section XIII (Third Party Sales and Transfers) of this MOU.

### 9.4 Government Background Information.

- 9.4.1 Disclosure: Each Participant, upon request, will disclose to the other Participant any relevant Government Background Information generated by its military or civilian employees, provided that:
  - 9.4.1.1 such Government Background Information is necessary to or useful in the TM Activity, with the furnishing Participant determining whether it is "necessary to" or "useful in" the TM Activity;
  - 9.4.1.2 such Government Background Information may be made available without incurring liability to holders of Intellectual Property Rights;
  - 9.4.1.3 disclosure is consistent with national disclosure policies and regulations of the furnishing Participant; and
  - 9.4.1.4 any disclosure or transfer of such Government Background Information to Contractors is consistent with the furnishing Participant's export control laws and regulations.
- 9.4.2 Use: Government Background Information disclosed by one Participant to the other may be used without charge by the other Participant for Project Purposes only. However, subject to Intellectual Property Rights held by other than the Participant, Government Background Information may be used for Defense Purposes by the receiving Participant without charge when the use of such Government Background Information is necessary for the use of Government Foreground Information. The furnishing Participant (after consultation with the receiving Participant) will determine whether such use of Government Background Information is necessary. The furnishing Participant will retain all its rights with respect to such Background Information.

## 9.5 Contractor Foreground Information.

- 9.5.1 Disclosure: Contractor Foreground Information generated and delivered by Contractors, will be disclosed without charge to the other Participant.
- 9.5.2 Use: Each Participant may use all Contractor Foreground Information generated and delivered by Contractors of the other Participant without charge for Defense Purposes only. The Participant whose Contractors generate and deliver Contractor Foreground Information will also retain rights of use thereto in accordance with the applicable Contract(s). Any sale or other transfer to a Third Party of Contractor Foreground Information will be subject to the provisions of Section XIII (Third Party Sales and Transfers) of the MOU.

## 9.6 Contractor Background Information.

- 9.6.1 Disclosure: Any Contractor Background Information, (including information subject to Intellectual Property Rights) which is or has been generated outside of a TM Activity and delivered by Contractors will be disclosed to the other Participant provided the following provisions are met:

- 9.6.1.1 such Contractor Background Information is necessary to or useful in the TM Activity, with the furnishing Participant determining whether it is "necessary to" or "useful in" the TM Activity;

- 9.6.1.2 such Contractor Background Information may be made available without incurring liability to holders of Intellectual Property Rights;

- 9.6.1.3 disclosure is consistent with national disclosure policies and regulations of the furnishing Participant; and

- 9.6.1.4 any disclosure or transfer of such Contractor Background Information to Contractors is consistent with the furnishing Participant's export control laws and regulations.

- 9.6.2 Use: Contractor Background Information furnished by one Participant's Contractors and disclosed to the other Participant may be used without charge by the other Participant for Project Purposes only, and may be subject to further restrictions by holders of Intellectual Property Rights. The furnishing Participant will retain all its rights with respect to such Contractor Background Information.

## 9.7 Jointly Generated Foreground Information.

9.7.1 Disclosure: All Jointly Generated Foreground Information generated under a TM Activity will be disclosed to both Participants promptly and without charge.

9.7.2 Use: Each Participant generating or receiving Jointly Generated Foreground Information may use or have used such information without charge only for its Defense Purposes, unless mutually determined otherwise in writing.

9.7.3 Information generated by PA WGs will be treated as Jointly Generated Foreground Information unless mutually determined otherwise in writing.

#### 9.8 Alternative Uses of Information.

9.8.1 Any Background Information provided by one Participant will be used by the other Participant only for the purposes set forth in this MOU, unless otherwise consented to in writing by the furnishing Participant.

9.8.2 The prior written consent of each Participant will be required for the use of Foreground Information for any purposes other than those provided for in this MOU.

#### 9.9 Intellectual Property Rights.

9.9.1 All unclassified Information subject to Intellectual Property Rights will be identified and marked, and it will be handled as Controlled Unclassified Information in accordance with Section X (Controlled Unclassified Information).

9.9.2 All Classified Information subject to Intellectual Property Rights will be identified, marked and handled in accordance with Section XII (Security).

#### 9.10 Inventions and Patents.

9.10.1 Reporting of Inventions. A Participant will disclose to the other Participant any Invention made by its respective employees or Contractors as promptly as possible after the Invention is made. The disclosure will be in the form of a written report listing the inventor(s) and describing the manner and process of making and using the Invention in sufficient technical detail as to enable any person skilled in the art to which it pertains to make and use the Invention.

9.10.2 Title to Inventions. Each Participant will retain title to each Invention made by its respective employees.



9.10.2.1 The Participant retaining title to such Inventions will grant to the other Participant at least a royalty-free, nonexclusive, irrevocable license to practice or have practiced worldwide for Defense Purposes by or on behalf of the other Participant such Inventions covered by any resulting Patents.

9.10.2.2 The Participant retaining title to such Inventions may, in its discretion, grant rights in such Inventions covered by any resulting Patents to the other Participant (in addition to the rights granted by 9.10.2.1), or any other person or entity, upon such terms and conditions as it deems appropriate.

9.10.3 Title to Joint Inventions. Title to Inventions made jointly by employees of both Participants will be held jointly by the Participants unless otherwise mutually determined.

9.10.3.1 The Participants may grant rights in such joint Inventions to any other person or entity, upon such terms and conditions, as the Participants mutually determine.

9.10.4 Contractor Generated Inventions. Title to Inventions made by Contractors will be held in accordance with the terms of the respective Contract. Where any Contract fails to specify how title in any Patent will be held, title will be determined in accordance with the national laws governing Inventions by Contractors of the Participant who awarded the Contract.

9.10.4.1 Contractor Generated Inventions in Unique National Variants. Where Inventions are made in connection with unique national variants, paid for fully by or on behalf of only one Participant, regardless of who is the Contracting Agency, the Contracting Agency must ensure that the Contract grants to the Participant funding the national variant any rights as directed by that Participant.

9.10.4.2 Contractor Generated Inventions of Participants. Where a Contract is awarded by a Participant on its own behalf or by a Contracting Agency on behalf of the other Participant or both Participants, the Contract so awarded must ensure that the owner of any Invention made by a Contractor will grant to the Participants at least a royalty-free, nonexclusive, irrevocable license to practice or have practiced worldwide for Defense Purposes by or on behalf of the Participants the Invention covered by any resulting Patents.

9.10.5 Patent Applications. A Participant having the right to hold title to an Invention may elect to file Patent applications or otherwise seek Patent protection thereon provided it so advises the other Participant of its intention to do so and the countries in which it intends to seek Patent

protection within 60 days from the date it reports the Invention to the other Participant.

9.10.5.1 If a Participant initially elects to seek Patent protection, but later decides not to continue seeking Patent protection, or if a Participant decides not to share the costs of seeking Patent protection of a joint Invention, then the other Participant may elect (but is not required) to seek Patent protection on such Invention in those countries in which the Participant has not elected to seek Patent protection.

9.10.5.2 If the other Participant elects to seek Patent protection in those countries, the Participant initially having the right to seek Patent protection on the Invention decides to consent to such filing by the other Participant and the Participants will equitably share, as mutually determined by the Participants, any royalties from the licensing of any resulting Patents taking into consideration the expenses incurred by each Participant in securing Patent protection.

9.10.5.3 A Participant will not file or cause to be filed any Patent application outside the United States of America and Australia, or publish or cause to be published any such application or Patent thereon anywhere, without the other Participant's prior written consent where the application contains either:

9.10.5.3.1 the other Participant's Background Information, or

9.10.5.3.2 Jointly Generated Foreground Information.

9.10.5.4 Patent applications on Inventions which contain Classified Information will be protected and safeguarded in accordance with the requirements contained in Section XII (Security).

#### 9.10.6 Patent Prosecution.

9.10.6.1 The expenses attendant to seeking Patent protection as specified above will be borne by the Participant seeking Patent protection. Where both Participants jointly seek Patent protection, the expenses attendant to seeking the Patent protection will be shared equally between the Participants, unless mutually determined otherwise.

9.10.6.2 Each Participant will provide the other Participant with copies of Patent applications it files in Patent offices, along with a power to inspect and make copies of all documents retained in the files of the applicable Patent office that are available for inspection and copying by a Participant seeking Patent protection.

9.10.6.3 A Participant seeking Patent protection will have the right to control the Patent prosecution where it is solely funding the expenses attendant to seeking the Patent protection. Where both Participants are seeking Patent protection, they will jointly control the Patent prosecution if each is funding a portion of the expenses attendant to seeking the Patent protection. The Participants will cooperate with each other in seeking Patent protection.

9.10.7 Maintenance Fees. The fees payable to a Patent office in order to maintain the Patent on an Invention will be paid by the Participant having title to the Patent or will be shared equally if title is held jointly by both Participants. If one Participant decides not to pay the required maintenance fees, it will immediately notify the other Participant, who may pay the maintenance fees if it desires to maintain the enforcement of the Patent. In this case, the Participant who has decided not to pay the maintenance fees will assign its rights to the other Participant.

9.10.8 Infringement. Each Participant will notify the other Participant of any Patent infringement claims made in its territory arising in the course of work performed under any PA of this MOU. Insofar as possible, the other Participant will provide information available to it that may assist in defending the claim. Each Participant will be responsible for handling all Patent infringement claims made in its territory, and will consult with the other Participant during the handling, and prior to any settlement, of such claims. Unless the Participants otherwise mutually determine in writing, the costs of resolving Patent infringement claims will be handled as follows. The Participants will share in the costs of resolving Patent infringement claims in the same percentage as they share the full Financial and Non Financial Costs of the applicable PA. If the infringement claim does not arise under a PA, then the Participants will share in the costs of resolving Patent infringement claims equally. The Participants will, in accordance with their national laws and practices, give their authorization and consent for all use and manufacture in the course of work performed under a PA of any invention covered by a Patent issued by their respective countries.

## SECTION X

### CONTROLLED UNCLASSIFIED INFORMATION

- 10.1 Except as otherwise provided in this MOU or as authorized in writing by the originating Participant, Controlled Unclassified Information provided or generated pursuant to this MOU and any of its PAs will be controlled as follows:
- 10.1.1 Such information will be used only for the purposes authorized for use of Information as specified in Section IX (Disclosure and Use of Information).
  - 10.1.2 Access to such information will be limited to personnel whose access is necessary for the permitted use under subparagraph 10.1.1.1 and will be subject to the provisions of Section XIII (Third Party Sales and Transfers).
  - 10.1.3 Each Participant will take all lawful steps, which may include national classification, available to it to keep such information free from further disclosure (including requests under any legislative provisions), except as provided in subparagraph 10.1.2, unless the originating Participant consents to such disclosure. In the event of unauthorized disclosure, or if it becomes probable that the information may have to be further disclosed under any legislative provisions, immediate notification will be given to the originating Participant.
- 10.2 To assist in providing the appropriate controls, the originating Participant will ensure that Controlled Unclassified Information is appropriately marked. The Participants will decide, in advance and in writing, on the markings to be placed on the Controlled Unclassified Information. Controlled Unclassified Information markings will be identified in a MOU implementing security instruction specifically for WG and E&MT. For PAs, Controlled Unclassified Information markings will be defined in the PSI.
- 10.3 Controlled Unclassified Information provided or generated pursuant to this MOU will be handled in a manner that ensures control as provided for in paragraph 10.1.
- 10.4 Prior to authorizing the release of Controlled Unclassified Information to Contractors, the Participants will ensure the Contractors are legally bound to control such information in accordance with the provisions of this Section.

## SECTION XI

### VISITS TO ESTABLISHMENTS

- 11.1 Each Participant will permit visits to its government establishments, agencies and laboratories, and Contractor industrial facilities, by employees of the other Participant or by employees of the other Participant's Contractor(s), provided that the visit is authorized by both Participants and the employees have any necessary and appropriate security clearances and a need-to-know.
- 11.2 All visiting personnel will be required to comply with security regulations of the host Participant. Any information disclosed or made available to visitors will be treated as if supplied to the Participant sponsoring the visiting personnel, and will be subject to the provisions of this MOU.
- 11.3 Requests for visits by personnel of one Participant to a facility of the other Participant will be coordinated through official channels, and will conform with the established visit procedures of the host Participant. Requests for visits will bear the name of this MOU and the applicable TM Activity.
- 11.4 Lists of personnel of each Participant required to visit, on a continuing basis, facilities of the other Participant will be submitted through official channels in accordance with recurring international visit procedures.

## SECTION XII

### SECURITY

- 12.1 All Classified Information provided or generated pursuant to this MOU will be stored, handled, transmitted, and safeguarded in accordance with the Agreement between the Government of Australia and the Government of the United States of America concerning Security Measures for the Protection of Classified Information which entered into force on 7 November 2002.
- 12.2 Classified Information will be transferred only through official government-to-government channels or through channels approved by the Designated Security Authorities (DSAs) of the Participants. Such information will bear the level of classification, denote the country of origin, the conditions of release, and the fact that the information relates to this MOU and the applicable TM Activity.
- 12.3 Each Participant will take all lawful steps available to it to ensure that Classified Information provided or generated pursuant to this MOU is protected from further disclosure, except as permitted by paragraph 13.8, unless the other Participant consents to such disclosure. Accordingly, each Participant will ensure that:
- 12.3.1 The recipient will not release the Classified Information to any government, national, organization, or any other entity of a Third Party without the prior written consent of the originating Participant in accordance with the procedures detailed in Section XIII (Third Party Sales and Transfers).
  - 12.3.2 The recipient will not use the Classified Information for other than the purposes provided for in this MOU.
  - 12.3.3 The recipient will comply with any distribution and access restrictions on Classified Information that is provided under this MOU.
  - 12.3.4 The recipient will not downgrade the national security classification assigned by the furnishing Participant without the prior written consent of the furnishing Participant.
- 12.4 The Participants will investigate all cases in which it is known or where there are grounds for suspecting that Classified Information provided or generated pursuant to this MOU has been lost or disclosed to unauthorized persons. Each Participant also will promptly and fully inform the other Participant of the details of any such occurrences, of the final results of the investigation, and of the corrective action taken to preclude recurrences.

- 12.5 The PM will prepare a PSI and a CG for a PA. The PSI and the CG will describe the methods by which Information will be classified, marked, used, transmitted, and safeguarded. The PSI and CG will be developed by the PM within three months after the PA comes into effect. They will be reviewed and forwarded to the Participants' DSA for approval and will be applicable to all government and Contractor personnel participating in the project. The CG will be subject to regular review and revision with the aim of downgrading and classification whenever this is appropriate. The PSI and the CG will be approved by the appropriate DSA prior to the transfer of any Classified Information or Controlled Unclassified Information.
- 12.6 The DSA of the Participant in which a classified Contract is awarded pursuant to this MOU will assume responsibility for administering within its territory security measures for the protection of the Classified Information, in accordance with its laws and regulations. Prior to the release to a Contractor, prospective Contractor, subcontractor or prospective subcontractor of any Classified Information provided or generated under this MOU, the DSA will:
- 12.6.1 Ensure that such Contractor, prospective Contractor, subcontractor, or prospective subcontractor and their facility (ies) have the capability to protect the Classified Information adequately under each Participant's National Industrial Security Program.
  - 12.6.2 Grant a security clearance to the facility (ies).
  - 12.6.3 Grant a security clearance for all personnel whose duties require access to Classified Information.
  - 12.6.4 Ensure that all persons having access to the Classified Information are informed of their responsibilities to protect the Classified Information in accordance with national security laws and regulations, and provisions of this MOU.
  - 12.6.5 Carry out periodic security inspections of cleared facilities to ensure that the Classified Information is properly protected.
  - 12.6.6 Ensure that access to the Classified Information is limited to those persons who have a need-to-know for the purposes of the MOU and any TM Activities.
- 12.7 Contractors, prospective Contractors, subcontractors, or prospective subcontractors which are determined by DSAs to be under financial, administrative, policy or management control of nationals or entities of a Third Party, may participate in a Contract or subcontract requiring access to Classified Information provided or generated pursuant to this MOU or any of its PAs only when enforceable measures are in effect to ensure that nationals or other entities of a Third Party will not have access to Classified Information. If enforceable measures are not in effect to

preclude access by nationals or other entities of a Third Party, the other Participant will be consulted for approval prior to permitting such access.

- 12.8 For any facility wherein Classified Information is to be used, the responsible Participant or Contractor will approve the appointment of a person or persons to exercise effectively the responsibilities for safeguarding at such facility the Classified Information pertaining to this MOU and any TM Activity. These officials will be responsible for limiting access to Classified Information involved in this MOU and any TM Activity to those persons who have been properly approved for access and have a need-to-know.
- 12.9 Each Participant will ensure that access to the Classified Information is limited to those persons who possess requisite security clearances and have a specific need for access to the Classified Information in order to participate in this MOU or any TM Activity.
- 12.10 Information provided or generated pursuant to this MOU may be classified as high as SECRET. The existence of this MOU is UNCLASSIFIED and the contents are UNCLASSIFIED. The classification of the existence of any PA and its contents will be stated in that PA.



## SECTION XIII

### THIRD PARTY SALES AND TRANSFERS

- 13.1 Except to the extent permitted in paragraph 13.2, the Participants will not sell, transfer title to, disclose, transfer possession of Foreground Information (or any item produced either wholly or in part from Foreground Information) or jointly acquired or produced Equipment and Material, to any Third Party without the prior written consent of the Government of the other Participant. Furthermore, neither Participant will permit any such sale, disclosure, or transfer, including by the owner of the item, without the prior written consent of the Government of the other Participant. Such consent will not be given unless the Government of the intended recipient consents in writing with the Participants that it will:
- 13.1.1 not retransfer, or permit the further retransfer of, any equipment or information provided; and
  - 13.1.2 use, or permit the use of, the equipment or information provided only for the purposes specified by the Participants.
- 13.2 Each Participant will retain the right to sell, transfer title to, disclose, or transfer possession of Foreground Information that:
- 13.2.1 is generated solely by either that Participant or that Participant's Contractors in the performance of that Participant's work allocation under Section II (Scope of Work);
  - 13.2.2 does not include any Foreground Information or Background Information of the other Participant, and whose generation, test, or evaluation has not relied on the use of Equipment and Material of the other Participant.
- 13.3 In the event questions arise as to whether the Foreground Information (or any item produced either wholly or in part from the Foreground Information) that a Participant intends to sell, transfer title to, disclose, or transfer possession of to a Third Party is within the scope of paragraph 13.2, the matter will be brought to the immediate attention of the SC. The Participants will resolve the matter prior to any sale or other transfer of such Foreground Information (or any item produced either wholly or in part from the Foreground Information) to a Third Party.
- 13.4 The Participants will not sell, transfer title to, disclose, or transfer possession, grant, donate or transfer usage rights of Equipment and Material or Background Information provided by the other Participant to any Third Party without the prior written consent of the Government of the Participant that provided such equipment or information. The providing Participant's Government will be solely responsible

for authorizing such transfers and, as applicable, specifying the method and provisions for implementing such transfers.

- 13.5 Consent for Third Party sales and transfers of Foreground Information, jointly acquired or produced Equipment and Material, or any item produced either wholly or in part from Foreground Information will be subject to foreign policy, national security considerations, and national laws, regulations and policies. A Participant's Government's approval of the other Participant's Government's proposed sale or transfer to a Third Party will take into account their willingness to sell or transfer such equipment or information to the same Third Party.

## SECTION XIV

### LIABILITY AND CLAIMS

- 14.1 Claims arising under this MOU will be dealt with in accordance with paragraph 1 of the Chapeau Agreement.
- 14.2 The Participants will share any costs required to be shared under subparagraph 1(b)(ii) of the Chapeau Agreement in the same proportions as the Financial Costs and Non-financial Costs are shared in the PA.
- 14.3 The Participants will share any costs required to be shared under subparagraph 1(b)(iv) of the Chapeau Agreement on the following basis:
  - 14.3.1 For Contracts where one Participant contracts solely on its own behalf, the Participant awarding the Contract will pay the cost of claims arising under that Contract.
  - 14.3.2 For Contracts where one Participant contracts on behalf of the other Participant, the Participant on whose behalf the Contract was awarded will pay the cost of claims arising under that Contract. The contracting Participant will not indemnify Contractors against third party liability claims, unless otherwise mutually determined in a PA.
  - 14.3.3 For Contracts awarded on behalf of both Participants, the costs of claims arising under such Contracts will be shared in the same proportions as costs are shared in the PA. The contracting Participant will not indemnify Contractors against third party liability claims, unless otherwise mutually determined in a PA.

## SECTION XV

### PARTICIPATION OF ADDITIONAL NATIONS

- 15.1 The Participants recognize that other nations may wish to join this MOU.
- 15.2 Mutual consent of the Participants will be required to conduct discussions with potential additional participants. The Participants will discuss the arrangements under which another participant might join, including the furnishing of releasable Information for evaluation prior to joining. If the disclosure of Information is necessary to conduct discussions, such disclosure will be in accordance with Section IX (Disclosure and Use of Project Information), Section X (Controlled Unclassified Information), and Section XIII (Third Party Sales and Transfers).
- 15.3 The addition of new participants may require amendment to this MOU or the establishment of a new MOU.